LOOT TING YEE

v.

TAN SRI SHEIKH HUSSEIN SHEIKH MOHAMED & ORS.

FEDERAL COURT, KUALA LUMPUR
SUFFIAN LP
SALLEH ABAS FJ
ABDUL HAMID OMAR FJ
[CIVIL APPEAL NO. 12 OF 1981]
19 FEBRUARY 1982

CIVIL PROCEDURE: *Appeal - Leave to appeal - Alleged contempt of Court - Whether appealable to His Majesty - Whether criminal matter.*

The appellant was a teacher who was ordered to go on transfer but refused to comply. Instead he filed a suit in the High Court for a declaration, *inter alia*, that the purported transfer was void. While the suit was pending the Education Service Commission sent him a notice to show cause why he should not be dismissed. The appellant applied under O. 52, Rules of the High Court 1980 to commit the members of Education Service Commission for alleged contempt of Court. The High Court and, on appeal, the Federal Court held that there was no contempt. The appellant applied for leave to appeal to His Majesty.

Held:

[1] The trial Judge's decision was in a criminal matter and therefore there was no right of appeal beyond the Federal Court. An alleged contempt of Court is a criminal contempt if consisting of words or acts obstructing or tending to obstruct the administration of justice. [*O'Shea v. O'Shea and Parnell ex parte Tuohy* [1890] 1 PD 56; *Ambard v. A. G. for Trinidad and Tobago* [1936] AC 322; *In re Abdul Aziz's Application* [1964] MLJ 64; *PP v. Lee Ah Keh and Ors.* [1968] 1 MLJ 22; *In re Pollard* [1868] 5 Moore NS 111].

[2] The fact that the application was made under O. 52, Rules of the High Court 1980, did not make any difference.

[Application dismissed]

Cases referred to:
O'Shea v. O'Shea and Parnell ex parte Tuohy [1890] 1 PD 56
Ambard v. A. G. for Trinidad and Tobago [1936] AC 322
Re Abdul Aziz's Application [1964] MLJ 64
PP. v. Lee Ah Keh and Ors. [1968] 1 MLJ 22
In re Pollard [1868] 5 Moore NS 111

Legislation referred to:
Courts of Judicature Act 1964, 74(3)(a)
Rules of the High Court 1980, O. 52 r. 3

Other sources referred to:
Halsbury's Laws of England, 4th Edn., Para. 2

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondent - Lim Beng Choon, SFC

JUDGMENT

Suffian LP:

This is an application by the appellant for conditional leave to appeal to His Majesty from a judgment of this Court.

The appellant is a teacher at Sekolah Rendah Jenis Kebangsaan (China) Naam Kheung, Batu 3½, Jalan Cheras, Kuala Lumpur. He was ordered to go on transfer to Sekolah Rendah Jenis Kebangsaan (China) Chung Hwa, Jerteh, Trengganu. He refused to comply with the transfer order. He appealed to the education authority to cancel the order, but was not successful. On 11 April 1980, the Secretary General of the Ministry of Education directed him to present himself to the Headmaster of the school in Jerteh as early as possible. He again refused.

On 14 April 1980, he filed a suit in the High Court, Kuala Lumpur, asking for a number of declarations, the main one being a declaration that the purported transfer was void and of no effect. While the suit was still pending the Education Service Commission on 9 June 1980, sent him a notice to show cause why he should not be dismissed from the teaching service. The notice also carried several charges against him relating to acts allegedly in violation of several provisions of the Public Officer (Behaviour and Discipline) Regulations, also known as General Orders Cap. D. The several charges against the appellant are concerned primarily with his not complying with the transfer order and with his subsequent conduct.

On 29 September 1980, the appellant applied to the High Court under O. 52 r. 3 of the Rules of the High Court 1980 to commit the eight members of the Education Service Commission, the respondents, for alleged contempt of Court. The grounds for the application for committal can be summarized briefly as follows:

(1) knowing that there was a pending suit in the High Court for declarations on the purported order of transfer, the respondents had by sending the Notice to show cause prejudged the issues the subject matter of the pending suit;

(2) the action of the respondents clearly interfered with the true course of justice and the lawful process of Court;

(3) the actions of the respondents were clearly calculated to hinder the Court in the administration of justice, adversely affecting the authority and dignity of the Court; and

(4) the action of the respondents clearly prejudiced the merits of the applicant's case pending before the Court.

Wan Suleiman, FJ who sat in the High Court to hear the application held:

> that on the score of the restricted scope of publication alone, there cannot be contempt for by no stretch of the imagination can such publication pose any sort of risk of interference with the proper administration of justice. What was called by applicant's Counsel publication was in fact intimation to the applicant of charges of a departmental character proposed to be brought against him.

And in another passage of his judgment he said:

> Examined in the light of Lord Diplock's definition of contempt of Court cited earlier [i.e. *Attorney-General v. Times Newspaper Ltd.* [1973] 3 All ER 54] the conduct of the Education Service Commission in relation to the civil suit (which) applicant has filed neither tends to undermine the system for the administration of justice by Courts of law and the maintenance of public confidence in it nor does it inhibit citizens from availing themselves of that system for the settlement of their disputes.

On appeal the Federal Court agreed with the learned trial Judge.

The appellant being dissatisfied is desirous of appealing further to His Majesty - hence this application for leave to so appeal.

Mr. Lim Beng Choon for the respondents opposed the application on the ground that the decision appealed from was a decision as to the effect of the Constitution and therefore barred by s. 74 (3)(a) of the Courts of Judicature Act. Alternatively he argued that the decision was one relating to a criminal matter and therefore, since the repeal by Act A328 in 1976 of para. (c) of sub-section (2) of s. 74, no longer appealable to His Majesty. Finally he argued that the case was not from its nature a fit one for appeal; but he did not press this last ground.

Mr. Karpal Singh on behalf of the appellant argued that the decision appealed from did not involve interpreting the Constitution. In answer to the alternative argument he said that contempt was a civil matter, for the application to commit the respondents was made under O. 52 of the Rules of the High Court and if the respondents were committed they would be sent to a civil prison and the expenses of their detention would have to be borne by the appellant, not the Government. Lastly he said that this case is from its nature a fit one for appeal within para. (iii) of sub-section (1) of s. 74 and therefore appealable.

Thus the issue here is - whether or not the appellant may appeal beyond the Federal Court.

Clearly if the matter is criminal, he may not.

With respect we are of the opinion that the learned trial Judge's decision was in a criminal matter and therefore there is no right of appeal beyond the Federal Court.

In *O'Shea v. O'Shea and Parnell ex parte Tuohy* [1890] 1 PD 56, the Court of Appeal held that an application by a party to a civil action for an attachment against a person not a party to the action, for contempt of Court in the publication of comments calculated to prejudice the fair trial of the action, is a "criminal cause or matter" within the meaning of s. 74 of the Judicature Act, 1973; and no appeal from an order made upon such application could be brought to the Court of Appeal. There was a divorce suit and application was made by notice of motion for a writ of attachment for contempt of Court against Tuohy, for printing and publishing an article calculated to prejudice the petitioner in the divorce suit in the eyes of the public and to discredit him in the assertion of his right in the Court. Cotton LJ said at p. 63:

> It is conceded that [what Tuohy did] was a wrongful act, otherwise there could be no fine or imprisonment. And when you concede that it is a wrongful act, you find, although [the motion] is headed in the divorce action, it is not a proceeding in the action ... , but an application to punish an attempt to induce the jury not to try the case properly, which is as much a criminal act as an attack upon the Judge himself.

In *Ambard v. AG. for Trinidad and Tobago* [1936] AC 322 Lord Atkin delivering the judgment of the Privy Council said at p. 329:

> ... interferences [i.e. with the administration of justice - whether they be interferences in particular civil or criminal cases] when they amount to contempt of Court, are quasicriminal acts, and orders punishing them should, generally speaking, be treated as orders in criminal cases ...

The Singapore High Court has also held that contempt of Court is a criminal matter. In *Re Abdul Aziz's Application* [1964] MLJ 64 Rose CJ said at p. 65:

> It would seem to be clear that ... contempt of Court ... has long been regarded as a criminal matter. The observations of Lindley LJ and Lopes LJ in *O'Shea v. O'Shea and Parnell*, at pp. 64 and 65 are in point. As also is an observation of Wills J in the *King v. Parke* [1903] 2 KB 441 at p. 441 where he says that procedure in matters pending on the civil side 'would afford no assistance in the present discussion'. By this he must clearly be taken to have meant that contempt of Court falls on the criminal side of the jurisdiction.

In *PP v. Lee Ah Keh & Ors.* [1968] 1 MLJ 22 Ali J, as he then was, recognized that contempt of Court is a criminal offence, certainly if committed in the face of the Court. He cited with approval at p. 23 the head-note to *In re Pollard* [1868] 5 Moore NS. 111 which reads in part as follows:

> A contempt of Court being a criminal offence ...

This is not to say however that all contempt are criminal, for, as stated by Halsbury's *Laws of England*, 4th Edn., para. 2:

> Contempt of Court may be classified either as (1) criminal contempt, consisting of words of acts obstructing, or tending to obstruct or interfere with, the administration of justice or (2) contempt in procedure, otherwise known as civil contempt, consisting of disobedience to the judgments, orders or other process of the Court, and involving a private injury.

The alleged contempt here is clearly of the first and not of the second kind.

The fact that the application here was made under O. 52 of the Rules of the High Court 1980, and that if committed the respondents would be kept in a Civil Prison at the expense not of Government but of the applicant does not in our judgment make any difference.

As there is no appeal beyond the Court, this application is dismissed with costs.

Also found at [1983] 2 CLJ 74